

ITEM NO.	C.19/0422	FILE REF.	210
SUBJECT	Extraordinary Election		
OFFICER	Chief Executive Officer		
DATE OF REPORT	27 April 2022		

Reason for Urgent Business: Section 4.9 of the Local Government Act requires a local government to set the date of an extraordinary election at a meeting held within one month after the vacancy occurs, In the case of Cr Johnson the date of her vacating her position of councillor was 21 April 2022 therefore for Council to determine a date for an extraordinary election that decision must occur prior to 21 May 2022. Whilst a final decision may not be able to be made at this meeting Council can provide direction to the CEO for preparation of a report to a Special Council Meeting if necessary next month.

OFFICER RECOMMENDATION

That Item C.19/0422 be accepted as urgent business.

OFFICER RECOMMENDATION

1. *Council notes the resignations of Cr John Bookless and Cr Barbara Johnson from the office of councillor.*
2. *Council requests the CEO to present a report to a Special Meeting of Council to be held in the Council Chambers at 5.30pm on 12 May 2022 providing relevant information on the following options for consideration by Council:*
 - a) *The holding of an extraordinary postal election to be run by the Western Australian Electoral Commission for the filling of the 2 vacancies.*
 - b) *The holding of an extraordinary 'in-person' election with the CEO as returning officer for the filling of the 2 vacancies.*
 - c) *Possibility of applying to the Western Australian Electoral Commission for*

Summary/Background

In the last week two councillors resigned from the office of councillor, being Cr Barbara Johnson (resigned 21.4.22) and Cr John Bookless (resigned 26.4.22). Both resignations took immediate effect when tendered.

Both councillors resigned outside the prescribed timeframe for an office to remain vacant (section 4.17 of the Local Government Act 1995) and as such under legislation the Shire is required to conduct an extraordinary election.

Former Cr Johnson's term expires in October 2023 and former Cr Bookless' term in October 2025.

Officer Comment

Section 4.17 of the Local Government Act 1995 provides timeframes in which a position may remain vacant in the case of a resignation:

- On or after the third Saturday in July in the election year in which the term of the office would have ended
- With the approval of the Electoral Commissioner:
 - after the third Saturday in January in the election year in which the term of the office would have ended; but
 - before the third Saturday in July in that election year.

The author has made some preliminary enquiries seeking information if one or both of the offices can remain vacant. Reasons for this may include:

- The pending Local Government Act Reforms indicate that the Shire may be required to reduce the number of councillors from 9 to between 5 and 7 councillors, including the Shire President.
- There will be adequate representation even with a reduced number of councillors.
- If the election is held in July 2022, the term of former Cr Johnson will only be 15 months.

Preliminary advice received in the limited time available in preparing this item has included feedback that the timelines for implementing the Local Government Act Reforms is unknown as approval for drafting of the legislation has only recently been given.

Preliminary advice is that Council will be unable to seek a deferral of the election pending consideration of a proposal to reduce the number of offices of councillor from 9 to 7 as subsection 4A of section 4.20 of the Local Government Act (see below) only allows such action to occur if at least 80% of the number of offices of member of the council (with no wards) are still filled. Retaining 7 of 9 offices of councillor will only retain 77.77% of the offices, just below the 80% minimum threshold.

A query has been submitted to the WAEC seeking feedback on whether the 80% minimum threshold has any degree of flexibility. A response is unlikely to be received prior to the Council meeting. Advice from the DLGSC is that the Minister for Local Government doesn't have the power to override that subsection of the Local Government Act.

In conclusion, it is the author's view that due to the short timeframe between the two councillor resignations and the ordinary meeting of council it is difficult for Council to make a decision on the holding of an election and the method of election. With more detailed information expected within the next week on the cost comparison between the holding of 'in person' versus 'postal' elections and advice on the applicability of subsection 4A of section 4.20 of the Local Government Act it is recommended Council defer any decisions on these matters to a Special Meeting of Council that can be held prior to the Concept Forum scheduled for Thursday 12 May 2022.

Statutory Environment

Local Government Act 1995

2.32. How extraordinary vacancies occur in offices elected by electors

The office of a member of a council as an elector mayor or president or as a councillor becomes vacant if the member —

(b) resigns from the office;

4.8. Extraordinary elections

- (1) If the office of a councillor or of an elector mayor or president becomes vacant under section 2.32 an election to fill the office is to be held.
- (2) An election is also to be held under this section if section 4.57 or 4.58 so requires.
- (3) An election under this section is called an extraordinary election.

4.9. Election day for extraordinary election

- (1) Any poll needed for an extraordinary election is to be held on a day decided on and fixed -
 - (a) by the mayor or president, in writing, if a day has not already been fixed under paragraph (b); or
 - (b) by the council at a meeting held within one month after the vacancy occurs, if a day has not already been fixed under paragraph (a).
- (2) The election day fixed for an extraordinary election is to be a day that allows enough time for the electoral requirements to be complied with but, unless the Electoral Commissioner approves or section 4.10(b) applies, it cannot be later than 4 months after the vacancy occurs.
- (3) If at the end of one month after the vacancy occurs an election day has not been fixed, the CEO is to notify the Electoral Commissioner and the Electoral Commissioner is to —
 - (a) fix a day for the holding of the poll that allows enough time for the electoral requirements to be complied with; and
 - (b) advise the CEO of the day fixed.

4.17. Cases in which vacant offices can remain unfilled

- (1) If a member's office becomes vacant under section 2.32 on or after the third Saturday in July in the election year in which the term of the office would have ended under the Table to section 2.28, the vacancy is to remain unfilled and the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.
- (2) If a member's office becomes vacant under section 2.32 —
 - (a) after the third Saturday in January in the election year in which the term of the office would have ended under the Table to section 2.28; but
 - (b) before the third Saturday in July in that election year, the council may, with the approval of the Electoral Commissioner, allow the vacancy to remain unfilled and, in that case, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.

- (3) If a councillor's office becomes vacant under section 2.32 and under subsection (4A) this subsection applies, the council may, with the approval of the Electoral Commissioner, allow* the vacancy to remain unfilled and, subject to subsection (4), in that case, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.

* Absolute majority required.

- (4A) Subsection (3) applies —

- (a) if —
- (i) the office is for a district that has no wards; and
 - (ii) at least 80% of the number of offices of member of the council in the district are still filled; or
- (b) if —
- (i) the office is for a ward for which there are 5 or more offices of councillor; and
 - (ii) at least 80% of the number of offices of councillor for the ward are still filled.
- (4) If an ordinary or an extraordinary election is to be held in a district then an election to fill any vacancy in the office of councillor in that district that was allowed to remain unfilled under subsection (3) is to be held on the same election day and Division 9 applies to those elections as if they were one election to fill all the offices of councillor for the district or ward that need to be filled.

4.20. CEO to be returning officer unless other arrangements made

- (1) Subject to this section the CEO is the returning officer of a local government for each election.
- (2) A local government may, having first obtained the written agreement of the person concerned and the written approval of the Electoral Commissioner, appoint* a person other than the CEO to be the returning officer of the local government for —
- (a) an election; or
 - (b) all elections held while the appointment of the person subsists.

* Absolute majority required.

4.28. Fees and expenses

A local government is to —

- (a) pay fees to the electoral officers, in accordance with regulations, for conducting an election; and
- (b) meet expenses incurred by the electoral officers in connection with an election;

4.61. Choice of methods of conducting election

- (1) The election can be conducted as a —
- postal election** which is an election at which the method of casting votes is by posting or delivering them to an electoral officer on or before election day; or
 - voting in person election** which is an election at which the principal method of casting votes is by voting in person on election day but at which votes can also be cast in person before election day, or posted or delivered, in accordance with regulations.

- (2) The local government may decide* to conduct the election as a postal election.

* Absolute majority required.

Policy Implications

Policy M.39 'Election Caretaker Period' doesn't apply to extraordinary elections.

The Code of Conduct for Elected Members, Committee Members and Candidates will apply to any candidates who nominate for a vacancy.

Budget Implications

Council's 2021/22 budget doesn't provide for the costs of an extraordinary election.

Holding an extraordinary election to fill the vacancy will have financial implications depending on whether the election is held as an 'in-person' or postal election. All recent elections have been conducted on the Shire's behalf by the Western Australian Electoral Commission (WAEC) as a postal vote election that would appear to be well accepted by electors. The Local Government Act 1995 requires that the WAEC conduct local government elections on a full cost recovery basis. Preliminary discussions have been held with the WAEC that have led to a preliminary estimate of between \$17,000 and \$18,000 to run a postal election with these estimates to be confirmed within 7 days.

The costs of holding an in-person election are considerably less (greater than 50% less) but the tradeoff is typically a much lower voter participation rate.

Election costs may vary depending on whether there are sufficient nominations (thus no election necessary) or if other factors require variations.

Whole of Life Accounting – Not Applicable

Risk Management

The risk to Council is that the election isn't held in accordance with the Local Government Act 1995 and associated Regulations.

The level of risk to the Shire of Bridgetown-Greenbushes is in the area of reputation and have been assessed as "major consequence" with an "unlikely likelihood" giving a risk rating outcome of "moderate" in accordance with Council Policy F.21 'Risk Management'

Voting Requirements - Simple Majority